



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0055; FRL-8986-02-R4]

#### **Air Plan Approval; North Carolina: Mecklenburg Volatile Organic Compounds**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The changes were submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ), via a letter dated April 24, 2020, and were received by EPA on June 19, 2020. The SIP revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP, removes several rules, and adds several rules. The rules addressed in this final approval action relate to volatile organic compound (VOC) emissions and include several VOC Reasonably Available Control Technology (RACT) rules. EPA is finalizing the approval of these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective [Insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0055. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Ms. Spann can also be reached via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Overview**

The Mecklenburg County LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP<sup>1</sup> since EPA's 1991 LIP approval.<sup>2</sup> The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notices at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019.

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<sup>1</sup> Hereinafter, the terms "North Carolina SIP" and "SIP" refer to the North Carolina regulatory portion of the North Carolina SIP (i.e., the portion that contains SIP-approved North Carolina regulations).

<sup>2</sup> The Mecklenburg County, North Carolina SIP revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals – one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020.<sup>3</sup>

The April 24, 2020, submittal updates several MCAPCO rules incorporated into the LIP, removes two rules, and adds three rules to better align the LIP with the North Carolina SIP. The January 21, 2016, changes include updates to MCAPCO Rules 2.0926, *Bulk Gasoline Plants*; 2.0927, *Bulk Gasoline Terminals*; 2.0928, *Gasoline Service Stations Stage I*; and 2.0958, *Work Practice for Sources of Volatile Organic Compounds*. The submittal also seeks to remove MCAPCO Rules 2.0910, *Alternative Compliance Schedules* and 2.0929, *Petroleum Refinery Sources* and add MCAPCO Rules 2.0947, *Manufacture of Synthesized Pharmaceutical Products*; 2.0948, *VOC Emissions from Transfer Operations*; and 2.0949, *Storage of Miscellaneous Volatile Organic Compounds*.<sup>4</sup>

The January 21, 2016, submittal also asks EPA to reincorporate the following rules with no changes or very few minor grammatical edits into the LIP with a new effective date: MCAPCO Rules 2.0906, *Circumvention*; 2.0918, *Can Coating*; 2.0919, *Coil Coating*; 2.0924, *Magnet Wire Coating*; 2.0925, *Petroleum Liquid Storage in Fixed Roof Tanks*; 2.0930, *Solvent Metal Cleaning*; 2.0931, *Cutback Asphalt*; 2.0933, *Petroleum Liquid Storage in External Floating Roof Tanks*; 2.0937, *Manufacture of Pneumatic Rubber Tires*; and 2.0944, *Manufacture of Polyethylene, Polypropylene and Polystyrene*.<sup>5</sup>

On November 17, 2021, EPA published a notice of proposed rulemaking (NPRM) proposing to approve the April 24, 2020, SIP revision regarding updates to Mecklenburg's VOC rules. *See* 86 FR 64101. The November 17, 2021, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the November 17, 2021, NPRM were due on or before December 17, 2021, and EPA received one comment.

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<sup>3</sup> EPA received the April 24, 2020, submittal on June 19, 2020.

<sup>4</sup> EPA received other updates to the Mecklenburg County portion of the North Carolina SIP transmitted with the same April 24, 2020, cover letter. EPA has addressed or will address these other updates, including changes to certain Section 2.2600 and Section 2.0900 rules, in separate rulemakings.

<sup>5</sup> Hereinafter, the MCAPCO Rules will be identified by "Rule" and the accompanying number, e.g., Rule 2.0901.

## II. Response to Comment

As mentioned above, EPA received one comment on the November 17, 2021, NPRM. EPA's comment summary and response are provided below.

**Comment:** The commenter limits their comment to the removal of Rule 2.0929 – *Petroleum Refinery Sources* from the LIP and reiterates the fact that removal is based, in part, on the absence of refineries in Mecklenburg County. The commenter notes that the “surrounding bi-state metro area is comprised of more than six different counties in two different states” and that the “petition to remove the Rule 2.0929 does not clarify if Rock Hill or Gastonia have refineries that pose a leak hazard to the nearby inhabitants.” The commenter goes on to state that when Rule 2.0929 was implemented, there were more local areas in the United States that did not have refineries than local areas that did have refineries and that each local area does not have to petition the CAA for removal of Rule 2.0929. The commenter provides population data for Mecklenburg County and expresses concern that removal might encourage an entrepreneur to construct a refinery in the Charlotte local area to “avoid implementing the provisions of the [CAA] rather than building a refinery in an area that strictly reaches attainment of the refinery leak Rule 2.0929.”

**Response:** Rule 2.0929 was first adopted into the MCAPCO in 1979, establishing requirements to meet the 1978 Petroleum Refinery Leaks Control Technique Guidelines (CTG) for controlling VOC emissions from petroleum refinery equipment,<sup>6</sup> and incorporated into the LIP on May 2, 1991. *See* 56 FR 20140. Mecklenburg County was designated as a Moderate ozone nonattainment area for the 1979 1-hour ozone national ambient air quality standards (NAAQS) and the 1997 8-hour ozone NAAQS.<sup>7</sup> CAA section 182(b)(2) requires each state with

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<sup>6</sup> The Petroleum Refinery Leaks CTG is available at [https://www3.epa.gov/airquality/ctg\\_act/197806\\_voc\\_epa450\\_2-78-036\\_leaks\\_refinery\\_equipment.pdf](https://www3.epa.gov/airquality/ctg_act/197806_voc_epa450_2-78-036_leaks_refinery_equipment.pdf).

<sup>7</sup> Mecklenburg County was part of the Charlotte-Gastonia NC 1979 Moderate ozone NAAQS nonattainment area, comprised of Mecklenburg and Gastonia Counties in North Carolina, and part of the Charlotte-Gastonia-Rock Hill, NC-SC 1997 Moderate ozone NAAQS nonattainment area, comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan and Union Counties and a portion of Iredell County in North Carolina and a portion of York County in South Carolina. EPA redesignated these areas to attainment in 1995 and 2013, respectively. *See* 60 FR 34859 (July 5, 1995) and 78 FR 72036 (December 2, 2013).

an ozone nonattainment area classified as Moderate or higher to include requirements in its SIP implementing RACT for certain VOC sources within the area, including for all VOC sources in the nonattainment area that are covered by a CTG.

The April 24, 2020, SIP revision, submitted by North Carolina on behalf of MCAQ, seeks to remove Rule 2.0929 from the LIP because there are no petroleum refineries in Mecklenburg County<sup>8</sup> and because MCAQ would like the LIP to better align with the SIP.<sup>9</sup> EPA's role, with respect to a SIP revision, is focused on reviewing the submission to determine whether it meets the minimum criteria of the CAA. Where it does, EPA must approve the submission. EPA has reviewed the SIP revision and determined that removal of Rule 2.0929 is consistent with the CAA because, among other things, the rule does not apply to any facilities in Mecklenburg County and, therefore, removal will not impact air quality and because Mecklenburg County is designated as attainment or attainment/unclassifiable for all ozone NAAQS and, therefore, CAA section 182 no longer requires the LIP to implement the Petroleum Refinery CTG.

The commenter correctly notes that the SIP revision does not discuss whether petroleum refineries exist in Rock Hill, South Carolina or Gastonia, North Carolina. It was not necessary for the SIP revision or the November 17, 2021, NPRM to discuss whether petroleum refineries are located in those areas because Rule 2.0929 only applies within Mecklenburg County.

Since Rule 2.0929 is limited to Mecklenburg County, EPA does not find the statement regarding the number of local areas in the United States with and without refineries to be relevant for this rulemaking. It is also not clear what the commenter means by stating that each local area does not have to petition the CAA for removal of Rule 2.0929 or how this statement is relevant. The scope of this action is limited to Mecklenburg County. To the extent that other areas of the country need to address RACT for sources covered by the Petroleum Refinery CTG,

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<sup>8</sup> The term "petroleum refinery" is defined at Rule 2.0929(a)(6).

<sup>9</sup> EPA removed the corresponding state rule, 15A NCAC 02D .0929 - Petroleum Refinery Sources, from the SIP on August 1, 1997. See 62 FR 41277.

EPA would evaluate the RACT requirement in the context of other rulemakings for those other areas. As discussed above, a SIP must include RACT for sources covered by the Petroleum Refinery CTG only when the state contains an ozone nonattainment area classified as Moderate or higher, and implementation is only required within the nonattainment area.

The commenter is concerned that removal might encourage a refinery to locate in the Charlotte local area to “avoid implementing the provisions of the CAA rather than building a refinery in an area that strictly reaches attainment of the refinery leak Rule 2.0929” and provides population data for Mecklenburg County. However, this comment is unclear because Rule 2.0929 does not apply in areas outside of Mecklenburg County and the population of Mecklenburg County is irrelevant. Furthermore, only those areas in the country that are designated as a Moderate or higher ozone nonattainment area must have SIPs that implement the Petroleum Refinery CTG and there are no ozone nonattainment areas in North Carolina or South Carolina. If a petroleum refinery wants to locate in the Charlotte area, it would have to meet all relevant CAA requirements, including new source review permitting requirements that apply before construction and are designed to protect the NAAQS. Should the Charlotte area become an ozone nonattainment area with a Moderate or higher classification in the future, the area would be required to address RACT for all sources covered by all CTGs applicable at that time.

### **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of MCAPCO Rules 2.0906, *Circumvention*; 2.0918, *Can Coating*; 2.0919, *Coil Coating*; 2.0924, *Magnet Wire Coating*; 2.0925, *Petroleum Liquid Storage in Fixed Roof Tanks*; 2.0926, *Bulk Gasoline Plants*; 2.0927, *Bulk Gasoline Terminals*; 2.0928, *Gasoline Service Stations Stage I*; 2.0930, *Solvent Metal Cleaning*; 2.0931, *Cutback Asphalt*; 2.0933, *Petroleum Liquid Storage in External Floating Roof Tanks*; 2.0937, *Manufacture of Pneumatic Rubber Tires*; 2.0944, *Manufacture of Polyethylene, Polypropylene and Polystyrene*; 2.0947,

*Manufacture of Synthesized Pharmaceutical Products*; 2.0948, *VOC Emissions from Transfer Operations*; 2.0949, *Storage of Miscellaneous Volatile Organic Compounds*; and 2.0958, *Work Practice for Sources of Volatile Organic Compounds*, all of which have an effective date of December 15, 2015, into the Mecklenburg County portion of the North Carolina SIP to update the rules to more closely align with their analog North Carolina rules in the SIP. Also in this document, EPA is finalizing the removal of Rules 2.0910, *Alternative Compliance Schedules* and 2.0929, *Petroleum Refinery Sources* from the Mecklenburg portion of the North Carolina SIP, which were incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>10</sup>

#### **IV. Final Action**

EPA is approving the aforementioned changes to the Mecklenburg LIP. Specifically, EPA is approving changes to MCAPCO Rules 2.0926, *Bulk Gasoline Plants*; 2.0927, *Bulk Gasoline Terminals*; 2.0928, *Gasoline Service Stations Stage 1*; and 2.0958, *Work Practice for Sources of Volatile Organic Compounds*. EPA is finalizing the removal of Rules 2.0910, *Alternative Compliance Schedules* and 2.0929, *Petroleum Refinery Sources* and the addition of Rules 2.0947, *Manufacture of Synthesized Pharmaceutical Products*; 2.0948, *VOC Emissions from Transfer Operations*; and 2.0949, *Storage of Miscellaneous Volatile Organic Compounds*. EPA is taking final action to approve these changes to the LIP because they are consistent with the CAA.

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<sup>10</sup> See 62 FR 27968 (May 22, 1997).

EPA is also taking final action to reincorporate the following rules with no changes or very few minor grammatical edits with a new effective date into the LIP: MCAPCO Rules 2.0906, *Circumvention*; 2.0918, *Can Coating*; 2.0919, *Coil Coating*; 2.0924, *Magnet Wire Coating*; 2.0925, *Petroleum Liquid Storage in Fixed Roof Tanks*; 2.0930, *Solvent Metal Cleaning*; 2.0931, *Cutback Asphalt*; 2.0933, *Petroleum Liquid Storage in External Floating Roof Tanks*; 2.0937, *Manufacture of Pneumatic Rubber Tires*; and 2.0944, *Manufacture of Polyethylene, Polypropylene and Polystyrene*.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);



- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60 days**

**from date of publication of this document in the FEDERAL REGISTER**]. Filing a petition

for reconsideration by the Administrator of this final rule does not affect the finality of this

action for the purposes of judicial review nor does it extend the time within which a petition for

judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This

action may not be challenged later in proceedings to enforce its requirements. *See* section

307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 17, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart II – North Carolina**

2. In § 52.1770(c)(3), amend the table under “Section 2.0900 Volatile Organic Compounds” by:

- a. Removing the entries for “Section 2.0906”, “Section 2.0918”, “Section 2.0919”, “Section 2.0924”, “Section 2.0925”, “Section 2.0926”, “Section 2.0927”, “Section 2.0928”, “Section 2.0930”, “Section 2.0931”, “Section 2.0933”, “Section 2.0937”, “Section 2.0944”, and “Section 2.0958”, and adding in their place entries for “Rule 2.0906”, “Rule 2.0918”, “Rule 2.0919”, “Rule 2.0924”, “Rule 2.0925”, “Rule 2.0926”, “Rule 2.0927”, “Rule 2.0928”, “Rule 2.0930”, “Rule 2.0931”, “Rule 2.0933”, “Rule 2.0937”, “Rule 2.0944”, and “Rule 2.0958”;
- b. Removing the entries for “Section 2.0910” and “Section 2.0929”; and
- c. Adding entries for “Rule 2.0947”, “Rule 2.0948” and “Rule 2.0949” below the entry for “Section 2.0945”.

The additions read as follows:

### **§52.1770 Identification of plan.**

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(c) \* \* \*

#### **(3) EPA Approved Mecklenburg County Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section 2.0900 Volatile Organic Compounds				
**	**	*	*	*

Rule 2.0906	Circumvention	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0918	Can Coating	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0919	Coil Coating	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0924	Magnet Wire Coating	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0925	Petroleum Liquid Storage in Fixed Roof Tanks	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0926	Bulk Gasoline Plants	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

Rule 2.0927	Bulk Gasoline Terminals	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0928	Gasoline Service Stations Stage 1	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0930	Solvent Metal Cleaning	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0931	Cutback Asphalt	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0933	Petroleum Liquid Storage in External Floating Roof Tanks	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0937	Manufacture of Pneumatic Rubber Tires	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*

Rule 2.0944	Manufacture of Polyethylene, Polypropylene and Polystyrene	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0947	Manufacture of Synthesized Pharmaceutical Products	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0948	VOC Emissions from Transfer Operations	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
Rule 2.0949	Storage of Miscellaneous Volatile Organic Compounds	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	
**	**	*	*	*
Rule 2.0958	Work Practice for Sources of Volatile Organic Compounds	12/15/2015	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

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[FR Doc. 2022-04113 Filed: 2/25/2022 8:45 am; Publication Date: 2/28/2022]